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10/822,257	04/10/2004	Robin S. Gray		2705

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EXAMINER
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MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

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09/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/822,257

Applicant(s)

GRAY, ROBIN S.

Examiner

Kelly Mahafkey

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-56 is/are rejected.
- 7) ☒ Claim(s) 36-56 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/10/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

Note: This application discloses and claims only subject matter disclosed in prior Application No. 09/911045, filed 7/23/01, and names an inventor or inventors named in the prior application. Accordingly, this application may constitute a continuation or division. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 35-55 have been renumbered claims 36-56. Note: The claims as filed 7/17/04 had two claims numbered "35".

Claim 37 is objected to because of the following informalities: claim 37 recites, "forming a fusion line adjacent a first heating/cooling plate". This appears to be a typo, it is believed applicant intended to recite, "forming a fusion line adjacent to a first heating/cooling plate". Appropriate correction is required.

Claim 37 is objected to because of the following informalities: claim 37 recites, "said fusion line is adjacent said second heating/cooling plate". This appears to be a typo, it is believed applicant intended to recite, "said fusion line is adjacent to said second heating/cooling plate". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37( renumber from originally recited claim 36) recites, "wherein said step of joining comprises positioning said condiment sections in a first mold section such that the surfaces are in an abutting relationship forming a fusion line adjacent a first heating/cooling plate". It is unclear as to if the term "surfaces" refers to the surface of two or more condiment sections alone, or the surfaces of a condiment section and the mold, or to some other surfaces.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23, 30, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Durst (US 3615597).

Durst teaches of forming a condiment structure (Abstract). Durst teaches that the condiment structure can be in the form of sheets (Column 3 lines 26-30) that are first formed by molding and then cut into individual condiment slices (Example 5).

Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Luck (US 3966993).

Luck teaches of a process for forming a condiment structure (Abstract and Column 2 lines 40-51). Luck teaches that the ingredients in the condiment structure are combined and then molded into a final strip product (Column 3 line 45 through Column 4 line 19). Luck teaches that extruding or flaking and compressing may also be used in the place of molding to form the condiment structure (Column 4 lines 17-22).

Claims 21, 23-27, 30, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Forkner (US 4068007).

Forkner teaches of a process for forming a condiment slice (i.e. a condiment wafer). Refer specifically to Abstract and Column 6 lines 31-45. Forkner teaches that the condiment slice can be formed from an aggregate of different materials in a mold, from rolling or extruding and cutting, or from adhering two condiment slices together to form a aggregate condiment slice (Column 3 lines 45-60). Forkner teaches that a condiment structure can be formed by forming condiment sheets, dividing the sheets into condiment sections and joining the surfaces of the condiment sections by heating the condiment sheets (i.e. including at least one condiment sheet surface) to form a condiment structure which can later be divided to form condiment slices (Column 4 lines 26-50). Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5).

Claims 30, 31, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogdan (US 5855939).

Bogdan teaches of a process for forming a condiment slice (Abstract). Bogdan teaches that the condiment slice is formed from molded layers of condiment slices (Column 1 line 50 through Column 2 line 36 and Column 4 line 14 through Column 5 line 55). Bogdan teaches that the condiment slice may be formed in any suitable size and shape including comic characters, thus Bogdan teaches of a mold comprising designs or cavities for providing borders or designs to the condiment structure (Column 3 lines 1-5). Bogdan teaches that one material can be deposited in a mold and then a second material can be deposited on top of the first material forming a condiment material (Figure 4).

Claims 21, 22, 30, 41, 42, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Alden (US 5894028).

Alden teaches of forming a condiment slice (Abstract). Alden teaches that the condiment slices are formed from molds and can include several condiments that are

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intermingled (i.e. interweaved) by fusing together in a heating station (Column 2 line 66 through Column 3 line 17, Column 3 line 67 through Column 4 line 51, and Column 7 lines 4-12). Alden teaches of forming condiment sheets (i.e. bulk supplies such as sausage logs), dividing the condiment sheets by cutting into individual strips or strands (i.e. slicing), and joining the surfaces of the condiment sections to form a condiment structure (Column 6 lines 36-67).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28, 29, 32-34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durst (US 3615597).

Durst teaches of forming a condiment structure, as discussed above, however, is silent to the specific cutting details, specifically to forming a chopped condiment sheet, as recited in claims 28, 29, 32-34, and 36.

Specifically regarding cutting in one or multiple cutting operations, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form a condiment slice by cutting a condiment structure into strips first and then cutting the condiment strips into individual condiment slices through successive cutting operations or to form a condiment slice through a single cutting operation depending on the desired size of the final condiment slice and the original size of the condiment structure. To choose one either would not impart a patentable distinction to the claims as it would be within the ordinary ingenuity and common sense of one of ordinary skill in the art to cut a condiment structure to form a condiment slice in one cutting operation or multiple cutting operations depending on the desired final size of the condiment slice would not impart a patentable distinction to the claims.

Specifically regarding cutting with a blade and a shaping surface, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a blade in cutting the condiment structure, since a blade was a well known readily available cutting device and Durst does not teach of a specific cutting device for cutting the condiment structure. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to include a shaping surface while cutting the condiment structure in order to aid in forming the correct size and shape of the final condiment slice.

Claims 38, 39, 46-50 and 52-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forkner (US 4068007).

Forkner teaches of a process for forming condiment slices as discussed above. Forkner, however is silent to the method of producing the condiment strips as continuous as recited in claim 38, to mating the cutting tool with the mold section as recited in claim 46, a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 52, to the hopper/ejection apparatus comprises an ejection nozzle that spans the width or length of the mold as recited in claim 53, to the hopper/ejection apparatus comprises a laterally moving ejection nozzle which has full length or width mold distribution as recited in claim 54, to the extruded material as placed in a cutting or slice forming mold as recited in claim 56, and to the cutting tool and mold section as provided with heating plates for heating the condiment slices as recited in claim 48.

Regarding producing the condiment strips in a continuous method as recited in claim 38, continuous processing and batch processing are well known concepts in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the batch process as taught by Forkner continuous in order increase efficiency of the process.

Regarding mating the cutting tool with the mold section as recited in claim 46 and to the extruded material as placed in a cutting or slice forming mold as recited in claim 56, it was known in the art at the time the invention was made for cutting or slice tools to

be combined with molding apparatus, including those utilized with edible extruded materials. Forkner teaches that condiment strips may be formed by extruding and then cutting the extruded condiment strips to form the desired size. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a mold with the cutting device in order to assist in easily forming or cutting the extruded condiment piece to the desired size.

Regarding a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 52, the hopper/ejection apparatus as comprising an ejection nozzle that spans the width or length of the mold as recited in claim 53, and the hopper/ejection apparatus as comprising a laterally moving ejection nozzle which has full length or width mold distribution as recited in claim 54. The use of injection nozzle for filling was known in the art; this was commonly done in injecting filling into donut, injecting confection into mold etc.. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an ejection nozzle which moved laterally to deposit edible materials into molds in the process as taught by Forkner in order to automate the process, thus increasing operational efficiency. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to use an ejection nozzle that spanned the length or width of the mold in order for the mold to be filled completely in one pass of the ejection nozzle. The selection of an appropriate nozzle configuration to carry out the injection is a result-effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.

Regarding the cutting tool and mold section as provided with heating plates for heating the condiment slices as recited in claim 48, Forkner teaches of molding, cutting, and fusing together condiment slices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a mold and/or cutting device with heating plates to fuse the material inside into one piece, in order to combine the step of fusing into one step with molding and cutting, thus increasing the efficiency of the process. To combine processing steps and increase efficiency would be within the



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ordinary ingenuity and skill of one in the art and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forkner (US 4068007) in view of Jordan (US 3848757).

Forkner teaches of a process for forming condiment slices as discussed above. Forkner, however is silent to the cutting tool as provided with a vacuum attachment for moving the condiment slice as recited in claim 47.

Jordan teaches of an automated process for flexible sheets of material, such as cheese slices, in which the sheet is moved and sorted with a vacuum attachment (Abstract, Figure 1 item 10, and Column 3 line 65 through Column 4 line 23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a vacuum attachment on the cutting tool in the process as taught by Forkner so that the cut structure could be moved in an automated manner after being cut as taught by Jordan. One would have been motivated to do so in order to create an automated process and thus increase operational efficiency.

Claims 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdan (US 5855939).

Bogdan teaches of a process for forming condiment slices as discussed above. Bogdan, however is silent to a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 52, to the hopper/ejection apparatus comprises an ejection nozzle that spans the width or length of the mold as recited in claim 53, and to the hopper/ejection apparatus comprises a laterally moving ejection nozzle which has full length or width mold distribution as recited in claim 54.

Regarding a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 52, the hopper/ejection apparatus as comprising an ejection nozzle that spans the width or length of the mold as recited in claim 53, and to the hopper/ejection apparatus as comprising a laterally moving ejection nozzle which has

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full length or width mold distribution as recited in claim 54, the use of injection nozzle for filling was known in the art; this was commonly done in injection filling into donut, injecting confection into mold etc.. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an ejection nozzle which moved laterally to deposit edible materials into molds in the process as taught by Bogdan in order to automate the process, thus increasing operational efficiency. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to use an ejection nozzle that spanned the length or width of the mold in order for the mold to be filled completely in one pass of the ejection nozzle. The selection of an appropriate nozzle configuration to carry out the injection is a result-effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdan (US 5855939) in view of Luck (US3966993).

Bogdan teaches of a process for forming condiment slices as discussed above. Bogdan, however is silent to a continuous method for forming condiment slices comprising: extruding a plurality of condiment sections from a plurality of extrusion nozzles, fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices as recited in claim 40.

Luck teaches of a process for forming a condiment structure (Abstract and Column 2 lines 40-51). Luck teaches that the ingredients in the condiment structure are combined and then molded into a final strip product (Column 3 line 45 through Column 4 line 19). Luck teaches that extruding or flaking and compressing may also be used in the place of molding to form the condiment structure (Column 4 lines 17-22).

Regarding producing the condiment strips in a continuous method, continuous processing and batch processing are well known concept in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the

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batch process as taught by Bogdan continuous in order increase efficiency of the process in the absence of new or unexpected results.

Regarding extruding a plurality of condiment sections from a plurality of extrusion nozzles, Bogdan teaches forming a plurality of condiment sections by molding. Luke teaches that condiment strips can be molded or extruded. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute one art recognized functional equivalent (i.e. extruding multiple strips) for another (i.e. molding multiple strips) in the process of forming a condiment strip as disclosed by Bogdan, depending on which equipment were more available and affordable at the time the invention was made. To do so would be substituting one functional equivalent for another and would not impart a patentable distinction to the claims absent unexpected results.

Regarding fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices, Bogdan teaches that it is desirable to form condiment slices and then combine them together; Bogdan teaches, when desired, loafs of condiment, including a loaf of jelly, peanut butter, and jelly is formed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to fuse the condiment loaf as taught by Bogdan together so that when applying the condiment to a sandwich or other food product the condiment remained intact and together. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to slice the condiment loaf into condiment slices in order to tailor the condiment slice to the size of the bread for which the condiment slice was to be placed on.

Claims 37 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alden (US 5894028).

Alden teaches of a method for forming condiment slices from condiment strips, however, is silent to two condiment sections each placed in molds with heating plates which fuse and heat together the condiment sections as recited in claim 37, to cutting the woven condiment structure in one single cutting operation composed of performing

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single successive cuts, wherein cutting binds together the condiment slices, as recited in claims 43 and 44, and to applying an edible edge sealer which flows into the woven condiment strip and retains the weaving pattern of the condiment strip as recited in claim 45.

Regarding two condiment sections each placed in molds with heating plates which fuse and heat together the condiment sections as recited in claim 37, Alden teaches of molding and fusing together condiment sections. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a mold with heating plates which fuse the material inside into one in order to combine the steps of fusing and molding into one process, thus increasing the efficiency of the process. To combine two steps into one and increase efficiency would be within the ordinary ingenuity and skill of one in the art and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Regarding cutting the woven condiment structure in one single cutting operation composed of performing single successive cuts, wherein cutting binds together the condiment slices, it was known in the art at the time the invention was made to cut a pizza in one single cutting operation composed of performing single successive cuts, wherein the cutting binds together the pizza toppings, when the pizza is warm when cut. Alden teaches of a woven condiment structure, which comprises the pizza toppings and is to be placed on pizza crust. Alden does not teach of how to cut the pizza, thus one of ordinary skill in the art would cut the pizza with the woven condiment strips in a known method, such as cutting the warm pizza, including the crust with the woven condiment structure, in one single cutting operation composed of performing single successive cuts, in order to form cut pizza slices. To do so would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Regarding applying an edible edge sealer which flows into the woven condiment strip and retains the weaving pattern of the condiment strip as recited in claim 45, Alden teaches of a woven condiment structure, which comprises the pizza toppings and is to

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be placed on pizza crust and baked. It was known in the art at the time the invention was made that when baked, pizza crust would rise and form a lip around the edge of the pizza and the condiments inside. Thus, one of ordinary skill in the art at the time the invention was made that the pizza crust would act as an edible edge sealer around the pizza sauce and toppings, i.e. the woven condiment structure, as taught by Alden, absent any clear and convincing arguments and/or evidence to the contrary.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/  
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Examiner  
Art Unit 1761

